

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

LOUIS GARCIA,

Petitioner,

v.

No. 2:22-cv-000507-KWR-KK

HECTOR RIOS, *et al*,

Respondents.

**ORDER REOPENING CASE**

**THIS MATTER** is before the Court following further research regarding the filing fee and on Petitioner's Motions to Reconsider, for Status, and for Post-Judgment Review (Doc. 11, 13) (Motions). Petitioner asks the Court to set aside the procedural dismissal of this 28 U.S.C. § 2254 case because he in fact paid the filing as directed. *See* Doc. 11. The Clerk's Office conducted a financial reconciliation based on Petitioner's allegation and discovered his \$5 fee arrived in September of 2022, before the case was dismissed. The Clerk's Office credited the payment to this case to reflect that Petitioner timely complied with the payment obligation. *See* Doc. 12.

Fed. R. Civ. P. 59 affords relief where, as here, the Petitioner files the motion within 28 days after entry of the judgment and demonstrates the "need to correct ... error or prevent manifest injustice." *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). Fed. R. Civ. P. 60(a) permits relief from a judgment in the event of a "clerical mistake ... or ... oversight or omission, whenever one is found in a judgment, order, or other part of the record." *See Morrison Knudsen Corp. v. Ground Improvement Techniques, Inc.*, 532 F.3d 1063, 1085 (10th Cir. 2008) ("clerical mistakes ... may be corrected by the court at any time" under Rule 60(a)). The Court will grant relief under Rules 59 and 60(a), based on the initial misapplication of Petitioner's payment.

**IT IS ORDERED** that the Motions to Reconsider, for Status, and for Post-Judgment Review (**Doc. 11, 13**) are **GRANTED**, to the extent Petitioner seeks relief from the Order of Dismissal and Judgment entered November 17, 2022; and the Clerk's Office shall reopen the above-captioned case.

**IT IS SO ORDERED.**

  
**KEA W. RIGGS**  
**UNITED STATES DISTRICT JUDGE**